

United Nations Conference on the Law of the Sea

Geneva, Switzerland
24 February to 27 April 1958

Documents:
A/CONF.13/C.2/L.36-71

Annexes

Extract from the *Official Records of the United Nations Conference on the Law of The Sea, Volume IV (Second Committee (High Seas: General Regime))*

DOCUMENT A/CONF.13/C.2/L.36**Denmark: proposal**

[Original text : English]
[21 March 1958]

Article 36

ADDITIONAL PARAGRAPH

Add the following new paragraph :

“Every coastal State shall promote the establishment and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and — where circumstances so require — by way of mutual regional arrangements cooperate with neighbouring States for this purpose.”

DOCUMENT A/CONF.13/C.2/L.37**Portugal: proposal**

[Original text : English]
[21 March 1958]

Articles 32 and 33

Articles 32 and 33 and their headings to be replaced by a single article, reading as follows :

IMMUNITY OF STATE SHIPS**Article 32**

“State ships on the high seas have complete immunity from the jurisdiction of any State other than the flag State.”

DOCUMENT A/CONF.13/C.2/L.38/Rev.1**Portugal: proposal**

[Original text : English and French]
[25 March 1958]

Additional article 29 A *

Insert between articles 29 and 30 a new article worded as follows :

“Classification of ships

“1. For the purposes of these articles, all ships fall into two categories :

- (a) State ships
- (b) Merchant ships

“State ships are ships owned or operated by a State with the purpose of carrying out military and/or scientific non-

commercial functions and/or others dependent or related thereto, including notably hospital ships and survey ships. They must always be under the command or control of an officer duly commissioned by his government and bear and/or carry an external mark or marks of their category.

“Merchant ship is any ship other than a state ship.

“2. For the purposes of these articles state ships are divided in two categories :

- (a) Military or warships
- (b) Non-military or government ships

“A warship is a ship belonging to the naval forces of a State and bearing the external marks distinguishing warships of its nationality, under the command of an officer duly commissioned by the government and whose name appears in the Navy List, and manned by a crew who are under regular naval discipline.

“Government ships are state ships other than warships.”

* It was indicated in document A/CONF.13/C.2/L.38/Rev.1/Corr.1 of 3 April 1958 that the additional article proposed by Portugal was to be inserted in a place to be determined by the drafting committee, and not between articles 29 and 30.

DOCUMENT A/CONF.13/C.2/L.38/Rev.2

Portugal: revised proposal

[Original text : English]
[9 April 1958]

Additional article

"Classification of ships"

"1. For the purposes of these articles all ships fall into one or other of the following categories :

- (a) Warships
- (b) Government ships
- (c) Merchant ships

"Warships are ships belonging to the naval forces of a State and bearing the external marks distinguishing warships of its nationality, under the command of an officer duly commissioned by the government and whose name appears in the Navy List, and manned by a crew who are under regular naval discipline.

"2. Government ships are ships which being owned or operated by a government fall into one or other of the following categories :

- (i) Yachts, patrol vessels, hospital ships, fleet auxiliaries, military supply ships, troopships ;

(ii) Cable ships, ocean weather ships, vessels carrying out scientific investigations, fishery protection vessels ;

(iii) Vessels employed in services of a similar character to those referred to in (i) and (ii).

"They must always bear and/or carry an external mark or marks of their category and should always be under control of an [officer duly commissioned by his government].

"3. Merchant ships are all ships other than warships or government ships."

Remarks. — The drafting committee is the competent organ to determine where to insert the article if accepted.

In the expression "officer duly commissioned by his government" the terms "officer" and "commissioned" are taken in a broad sense and intend to mean "a responsible person duly placed in charge by his government as its representative on board". Such person may or may not discharge concurrently the office of captain, skipper or master of the ship. The above-mentioned expression is placed between brackets so that its drafting may be left to the drafting committee.

DOCUMENT A/CONF.13/C.2/L.39

Federal Republic of Germany: proposal

[Original text : English]
[21 March 1958]

Article 28

Delete the words "on the high seas".

Article 29

PARAGRAPH 1

At the end of the paragraph, substitute the words "between the State, the ship and its owner" for the words "between the State and the ship".

DOCUMENT A/CONF.13/C.2/L.40

United States of America: proposal

[Original text : English]
[21 March 1958]

Article 28

The article to read as follows :

"Every State has the right to navigate on the high seas ships having its nationality and flying its flag as a symbol thereof."

Comments

There are two principles underlying the rule stated in article 28 :

- (a) Every State, whether or not it has a seacoast, has

the legal power to grant its nationality to ships operating upon the high seas. States not having a seacoast were first regarded as having this power by the peace treaties (1919) following World War I, and again in the Declaration of Barcelona (1921).

(b) Ships fly the flag of the State of their nationality as a symbol, and prima facie evidence, of their nationality. Thus when it is stated that a ship is "flying" or "sailing under" a particular flag, what is meant is that the ship has the nationality of the flag State. However, there are other situations where a ship may properly display the

flag of a State of which it is not a national without any intention of claiming the latter's nationality.

For example, it is not unusual for a ship to fly at the mast-head or yard-arm the flag of a State other than the

State of its nationality. Thus at the yard-arm at sailing time a ship sometimes flies the flag of the country to which she is bound, and in a foreign port the flag of that State is frequently flown as a courtesy.

DOCUMENT A/CONF.13/C.2/L.41

United States of America: proposal

[Original text : English]
[21 March 1958]

Article 30

The article to read as follows :

" 1. Ships shall have the nationality of one State only. A State shall not grant its nationality to a ship already having the nationality of another State.

" 2. A ship may not change its nationality, and hence its flag, during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of documentation.

" 3. Save in cases expressly provided for in international treaties or in these articles, ships shall be subject to the exclusive jurisdiction of the State of their nationality while on the high seas."

Comments

Article 30 deals with three separate, although related, topics, viz: (a) single nationality, (b) change of nationality,

and (c) jurisdiction and control. The proposed re-draft of article 30 is intended to separate and clarify these topics.

(a) *Single nationality*. The opening phrase of article 30, that "Ships shall sail under the flag of one State only . . ." is intended to mean that "ships shall have the nationality of one State only," and it is believed the article should so state, as in paragraph 1 of the proposed re-draft.

(b) *Change of nationality*. The last sentence of article 30 regarding a change of flag is intended to refer to a change of nationality, and it is believed the article should so state, as in paragraph 2 of the re-draft.

(c) *Jurisdiction and control*. Article 30, in stating that, subject to the two mentioned exceptions, ships "shall be subject to its [the flag State's] exclusive jurisdiction on the high seas" is intended to mean that ships "shall be subject to the exclusive jurisdiction of the State of their nationality while on the high seas". It is believed that the article should so state, as in paragraph 3 of the re-draft.

DOCUMENT A/CONF.13/C.2/L.42

United States of America: proposal

[Original text : English]
[21 March 1958]

Article 31

The article to read as follows :

" A ship using the flags of two or more States as a symbol of nationality according to convenience may not claim any of the nationalities in question with respect to

any other State, and may be assimilated to a ship without nationality."

Comments

Article 31 is intended only to condemn the use of more than one flag in such a manner as to create the impression that the ship has now one nationality and now another. It is believed that this intention should be clarified.

DOCUMENT A/CONF.13/C.2/L.43

United States of America: proposal

[Original text : English]
[21 March 1958]

Article 34

PARAGRAPH 1

Delete the words "with regard *inter alia* to" and subparagraphs (a), (b) and (c).

Comments

The specifics of the safety of navigation are covered in

the lengthy International Convention for the Safety of Life at Sea which was signed in London on 10 June 1948. To this treaty there were forty-six parties as of 31 October 1956. Discussions are already under way for another international conference to be held in 1959 or 1960 to consider amendments to the 1948 Convention. Safety of navigation is a technical subject best handled by a separate convention.

DOCUMENT A/CONF.13/C.2/L.44**United States of America: proposal**

[Original text : English]
[21 March 1958]

Article 35

PARAGRAPH 2

After the words "No arrest or detention of the ship", insert the words "on the high seas".

Comments

Article 35 is intended to apply to incidents occurring only on the high seas. The proposed amendment is to make the limitation explicit in this paragraph.

DOCUMENT A/CONF.13/C.2/L.45**China: proposal**

[Original text : English]
[21 March 1958]

Article 26

PARAGRAPH 2

Transfer paragraph 2 to become paragraph 2 of article 4.

- (a) Freedom of navigation ;
- (b) Freedom of fishing ;
- (c) Freedom to lay submarine cables and pipelines ;
- (d) Freedom to fly over the high seas."

Article 27

The article to read as follows :

" 1. The high seas shall be open to all nations. No State may validly purport to subject any part of them to its sovereignty.

" 2. Freedom of the high seas comprises, *inter alia* :

Article 39

PARAGRAPH 1

Add a third sub-paragraph, reading as follows : " On the high seas, against the persons of property on board the ship if, for these ends, the person or persons committing such act take over the navigation or command of the ship."

DOCUMENT A/CONF.13/C.2/L.46**Albania and Czechoslovakia: proposal**

[Original text : French]
[21 March 1958]

Articles 38 to 43

Articles 38 to 43 to be replaced by a single article, reading as follows :

" All States are bound to take proceedings against and to punish acts of piracy, as defined by present international law, and to co-operate to the fullest possible extent in the repression of piracy."

DOCUMENT A/CONF.13/C.2/L.48**United Kingdom of Great Britain and Northern Ireland: proposal**

[Original text : English]
[21 March 1958]

Article 30

The article to read as follows :

" Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in these articles, shall be subject to its exclusive authority on the high seas. A ship may not change its flag save in the case of a real transfer of ownership or change of registry."

DOCUMENT A/CONF.13/C.2/L.49**United Kingdom of Great Britain and Northern Ireland: proposal**

[Original text : English]
[21 March 1958]

Article 34

The article to be deleted, and its subject-matter covered by a resolution.

Draft resolution

The United Nations Conference on the Law of the Sea, Desiring to emphasize the importance of ensuring safety at sea,

Conscious of the need to avoid the conflicts of interpretation and application which are likely to arise if principles which are embodied in, and given effect by, existing international instruments are embodied in a new convention,

Draws attention to the following international instruments :

The International Load Line Convention of 5 July 1930,
The International Convention of 10 June 1948 for the Safety of Life at Sea,

The International Regulations of 1948 for Preventing Collisions at Sea,

Commends the acceptance of these instruments to all States which are not yet parties to them, and

Expresses appreciation of, and support for, the work of the International Labour Organisation concerning conditions for crews.

DOCUMENT A/CONF.13/C.2/L.50**United Kingdom of Great Britain and Northern Ireland: proposal**

[Original text : English]
[21 March 1958]

Articles 35 and 36

The articles to be deleted, and their subject-matter covered by a resolution.

Draft resolution

The United Nations Conference on the Law of the Sea, Desiring to affirm the principles stated in article 35 and 36 of the draft articles drawn up by the International Law Commission,

Conscious of the need to avoid the conflicts of interpretation and application which are likely to arise if principles which are embodied in, and given effect by, existing international instruments are embodied in a new convention,

Draws attention to the following international conventions :

Convention of 23 September 1910 for the Unification of

Certain Rules of Law respecting Assistance and Salvage at Sea,

Convention of 23 September 1910 for the Unification of Certain Rules of Law with respect to Collisions between Vessels,

International Convention of 10 May 1952 for the Unification of Certain Rules relating to Penal Jurisdiction in Matters of Collisions and Other Incidents of Navigation,

International Convention of 10 June 1948 for the Safety of Life at Sea — chapter V of the annexed regulations,

Commends the acceptance of these instruments to all States which are not yet parties to them ; and

Expresses the belief that world-wide acceptance of these instruments will be the most effective method of putting into effect and securing universal respect for the principles affirmed in articles 35 and 36 of the draft articles drawn up by the International Law Commission.

DOCUMENT A/CONF.13/C.2/L.51**Mexico, Norway, United Arab Republic and Yugoslavia: proposal**

[Original text : English]
[21 March 1958]

Additional article 31 A

“The provisions of the preceding articles do not prejudice the question of ships employed on the official service of an inter-governmental organization flying the flag of the organization.”

DOCUMENT A/CONF.13/C.2/L.52/Rev.1**Portugal: proposal**

[Original text : English]
[1 April 1958]

Articles 39 and 40

Replace the expressions "private ship" and "private vessel" by the expression "merchant ship", and the expression "private aircraft" by the expression "civil aircraft", wherever they occur in the text of the above articles.

DOCUMENT A/CONF.13/C.2/L.53**Portugal: proposal**

[Original text : English]
[24 March 1958]

Article 47

Replace the term "foreign ship" by the expression "foreign merchant ship", whenever it occurs in the text of article 47.

DOCUMENT A/CONF.13/C.2/L.55**Greece: proposal**

[Original text : English]
[24 March 1958]

Article 30

The article to read as follows :

"Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in these articles, shall be subject to its exclusive authority on the high seas. A ship may not change its flag save in the case of change of registry."

DOCUMENT A/CONF.13/C.2/L.56**Greece: proposal**

[Original text : English]
[24 March 1958]

Article 34

The article to read as follows :

"Every State is required to issue for ships under its jurisdiction regulations to ensure safety at sea."

Comments

Subjects included in sub-paragraphs (a), (b) and (c) of paragraph 1 and paragraph 2 should be covered by a recommendation to be issued by the Conference, recommending to all States the acceptance of (a) the International Load Line Convention, (b) the International Convention for the Safety of Life at Sea and the International Regulations for Preventing Collisions at Sea (1948) and expressing the appreciation of the work of the International Labour Organisation on questions concerning the crews.

DOCUMENT A/CONF.13/C.2/L.57**Greece: proposal**

[Original text : English]
[24 March 1958]

Article 41

The article to read as follows :

“ A ship or aircraft is considered a pirate ship or aircraft if the persons in dominant control have manifested their intention of using it for the purpose of committing one of the acts referred to in article 29. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.”

DOCUMENT A/CONF.13/C.2/L.58**Venezuela: proposal**

[Original text : Spanish]
[24 March 1958]

Article 61**PARAGRAPH 2**

Amend this paragraph to read as follows :

“ 2. Subject to its right to impose prior conditions as to the route to be followed, in order to prevent undue interference with the exploration of the continental shelf and the exploitation of the seabed, subsoil and their resources, the coastal State may not impede the laying or maintenance of such cables or pipelines.”

Comment

The Venezuelan delegation considers that, if the coastal

State is under the obligation to permit the laying of submarine cables or pipelines and to enact legislation on the question of damage done to them wilfully or through culpable negligence, it is also entitled to be consulted on the proposed route of the telegraph cables, waterpipes, oil or gas pipelines, and high-tension cables with a view to planning their disposition in such a way that they will not interfere with existing installations or impede future developments.

The above amendment is closely connected with article 70 of the draft, to which the Venezuelan delegation to the Fourth Committee has submitted an amendment (A/CONF.13/C.4/L.34).

DOCUMENT A/CONF.13/C.2/L.59**Thailand: proposal**

[Original text : English]
[24 March 1958]

Article 35**PARAGRAPH 1**

The paragraph to read as follows :

“ 1. In the event of a collision or of any other incident of navigation concerning a ship on the high seas involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such persons except before the judicial or administrative authorities of the flag State.”

DOCUMENT A/CONF.13/C.2/L.60**Spain: proposal**

[Original text : Spanish]
[24 March 1958]

Articles 28, 29, 30 and 31

Substitute for the heading “ Sub-section A. Navigation ” “ Sub-section A. Freedom of navigation and regulation thereof ” and for articles 28 to 31 and their headings the following texts and headings :

“ THE RIGHT OF NAVIGATION AND STATUS
OF SHIPS

“ Article 28

“ By virtue of the freedom of the seas, States have the

right to sail ships under their flags on the high seas and to exercise sole jurisdiction over them, save as otherwise provided in this convention and in international treaties.

“ NATIONALITY OF SHIPS

“ Article 29

“ 1. States shall be entitled to fix the conditions for the grant, retention or loss of their nationality by ships, for the registration of ships in their territory and for the right to fly their flag.

“ 2. In any event, for purposes of recognition of a ship's nationality and flag by other States, there must exist between the State, the owner and the ship a genuine link

evidenced by authentic documents issued in due form by a competent authority.

“ REGISTRATION

“ Article 30

“ 1. The flag is the distinctive outward sign of a ship's nationality ; accordingly each ship shall sail under the flag of a single State. Any ship using two or more according to convenience may not claim protection under any of them with respect to any other State, and may be assimilated to a ship without nationality.

“ 2. Changes of flag in a port of call or during a voyage must necessarily represent a real transfer of ownership or change of registry of the ship.”

DOCUMENT A/CONF.13/C.2/L.63

United Kingdom of Great Britain and Northern Ireland: proposal

[Original text : English]
[25 March 1958]

Article 27

SUB-PARAGRAPH 4

Substitute the words “ Freedom of flight over the high seas ” for the words ” Freedom to fly over the high seas ”.

DOCUMENT A/CONF.13/C.2/L.64 *

United Kingdom of Great Britain and Northern Ireland: draft resolution

[Original text : English]
[25 March 1958]

This Committee,

Recalling that the Conference on the Law of the Sea has been convened by the General Assembly of the United Nations in accordance with resolution 1105 (XI) of 21 February 1957, and

Recognizing that the General Assembly by a decisive majority adopted resolution 1148 (XII) of 14 November 1957, which stated that there should be

- (i) Immediate suspension of nuclear tests with prompt installation of international control ;

- (ii) Cessation of production of fissionable materials for war ;
- (iii) Progressive reduction of stocks of nuclear weapons ; and

Recognizing that the question of nuclear tests and production is still within the competence of the General Assembly and the Disarmament Commission, and is at present under constant review and discussion by the governments concerned,

Decides that this committee does not pronounce upon any question relating to nuclear tests, but leaves this matter to the competence of the General Assembly.

* Incorporating document A/CONF.13/C.2/L.64/Corr.1.

DOCUMENT A/CONF.13/C.2/L.65 ***Spain: proposal**

[Original text : Spanish]
[25 March 1958]

Article 27

The article to read as follows :

“The high seas are free and open to all nations ; no State may validly purport to subject any part of them to its sovereignty.

“Freedom of the high seas comprises, *inter alia*, freedom to navigate, fish, lay and maintain submarine cables and pipelines, and to fly over the seas.”

* Incorporating document A/CONF.13/C.2/L.65/Corr.1.

DOCUMENT A/CONF.13/C.2/L.66**Brazil: proposal**

[Original text : French]
[25 March 1958]

Article 27

Replace article 27 by the following texts :

*Article 27***LEGAL STATUS OF THE WATERS
OF THE HIGH SEAS**

“1. The waters of the high seas are for the joint use of all States.

“2. No State may validly purport to subject any part of them to its sovereignty.”

*Article 27 A***EXERCISE OF AUTHORITY BY STATES
OVER THE WATERS OF THE HIGH SEAS**

“No State may exercise over the waters of the high seas any authority other than that permitted by these

articles or by other rules of international law, or exercise such authority for purposes other than those referred to in these articles or rules.”

*Article 27 B***USE OF THE WATERS OF THE HIGH SEAS**

“1. All States are entitled to use the waters of the high seas in accordance with the relevant regulations.

“2. The use of the waters of the high seas is regulated solely :

(a) By international law ; and

(b) By States, in such cases, for such purposes and within such limits as are authorized or determined by international law.

“3. All States shall use the waters of the high seas in such a way as not to interfere unduly with their use by other States.”

DOCUMENT A/CONF.13/C.2/L.67**Brazil: proposal**

[Original text : French]
[25 March 1958]

Article 26

The article to read as follows :

“The term ‘waters of the high seas’ means those waters lying between the outer limits of the territorial seas.”

DOCUMENT A/CONF.13/C.2/L.68**United Kingdom of Great Britain and Northern Ireland: proposal**

[Original text : English]
[26 March 1958]

Article 27

Add the following text :

“ These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas.”

DOCUMENT A/CONF.13/C.2/L.70 ***Mexico: amendment to document A/CONF.13/C.2/L.15**

[Original text : Spanish]
[26 March 1958]

Article 27

Amend as follows the text proposed by Yugoslavia (A/CONF.13/C.2/L.15) for article 27 :

1. For paragraph 2 (b) substitute the following :

“ (b) That no State may lawfully commit any act which adversely affects other States or their nationals in the enjoyment, in conformity with these provisions, of the freedom of the high seas.”

2. Delete sub-paragraph (c).

* Incorporating document A/CONF.13/C.2/L.70/Rev.1.

DOCUMENT A/CONF.13/C.2/L.71**India: draft resolution**

[Original text : English]
[26 March 1958]

The Committee,

Recalling that the Conference on the Law of the Sea has been convened by the General Assembly of the United Nations in accordance with resolution A/RES/478 of 22 February 1957,

Recognizing that there is a serious and genuine apprehension on the part of many States that nuclear explosions on the high seas constitute an infringement of the freedom of the seas,

Recognizing that the question of nuclear tests and production is still under review by the General Assembly under various resolutions on the subject and by the Disarmament Commission, and is at present under constant review and discussion by the governments concerned,

Considers that it is not necessary to prescribe any rule relating to nuclear tests on the high seas, and that this matter should be left to the decision of the General Assembly.

DOCUMENT A/CONF.13/C.2/L.71/Rev.1**India: revised draft resolution**

[Original text : English]
[27 March 1958]

The United Nations Conference on the Law of the Sea,

Recalling that the Conference has been convened by the General Assembly of the United Nations in accordance with resolution 1105 (XI) of 21 February 1957, and

Recognizing that there is a serious and genuine apprehension on the part of many States that nuclear explosions constitute an infringement of the freedom of the seas,

Recognizing that the question of nuclear tests and production is still under review by the General Assembly under various resolutions on the subject and by the Disarmament Commission, and is at present under constant review and discussion by the governments concerned,

Decides to refer this matter to the General Assembly for appropriate action.